IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 538 OF 2006

1. Shri Kasturi Vassudev Pai,

2. Shri Kasturi Prabhakar Pai,
through their constituted
Attorney, Shri M.R.Pai, resident of
Antonette Apartment,
Bldg.5, St. Joaquim Road,
Borda, Margao Goa. .... Petitioners

versus

1. The Administrative Tribunal of Goa,
Dada Vaidhya Hospital Building,
IIIrd Floor, Panaji Market,
Panaji Goa.

2. The Mazania of Shri Mahalasa Saunsthan,
Mardol Goa, through its Attorney,
having office at 'Shri Mahalasa Saunsthan'
Mardol Goa.

3. The Managing Committee of
Shri Mahalasa Saunsthan
Mardol Goa, through its Attorney,
having office at 'Shri Mahalasa Saunsthan'
Mardol Goa. .... Respondents.

Mr. S.D. Lotlikar, Sr.Advocate with Mr. S.Y. Thaly, Advocate for the petitioners.

Mr. Guru Shirodkar, Advocate for the respondent no.1.

Mr. M.S. Usgaonkar, Sr. Advocate for respondents no.2 and 3.

Coram:- J.N. PATEL, J.

Date:- 7th December, 2006.

ORAL JUDGMENT:

Rule returnable forthwith.

2. Heard learned Counsel for the parties.

3. The petitioners have approached this Court impugning the order dated 14.9.2006 passed by the Administrative Tribunal, Goa rejecting the application of the petitioners/appellants for being brought on record as legal heirs of the deceased Kasturi Manguesh Pai who expired on 21.8.2005 at Mangalore.

4. It is contended by the learned Counsel, Mr. Lotlikar for the petitioners that the application for being substituted as legal heirs/representatives of the original appellant in Devasthan Appeal No.7/2005 has been rejected on a wrong premise as the appeal was preferred by their father who was not found eligible for inclusion of his name in the catalogue of Mahajans by the authority. It is the case of the petitioners/appellants that these findings affect their legal rights as they have moved an application for inclusion of their name in the catalogue of Mahajans. Therefore in order to get the stand of their father indicated, it is necessary to get their names as legal heirs of the deceased father substituted in order to prosecute the appeal on his demise irrespective of the facts as to whether the office is inheritable or not and therefore according to learned Counsel for the petitioners, the right to prosecute the appeal survives, and they ought to have been substituted in place of their deceased father.

5. On the other hand, learned Counsel Mr. M.S. Usgaonkar submits that the application has been rightly rejected as on the death of the person who is recognised as a Mahajan or who has even agitated to claim the status, stands extinguished on his death and therefore right to prosecute the appeal would not survive and the Tribunal has rightly observed by referring to Devasthan Regulation, 1933 the status of a Mahajans by hereditary right/birth is intransmissible, and therefore, there cannot be transmission of Mahajanship right in favour of the appellants by inheritance by virtue of death of appellant.

6. In the opinion of this Court, the Administrative Tribunal has rejected the application on a wrong premise as the petitioners/appellants are not claiming any right by inheritance by virtue of death of their father who was the original appellant, but they seek to prosecute the appeal so as to get the stand taken by their father finally adjudicated which has been rejected and he was denied to be enrolled as a Mahajan which is subject matter of the appeal. It is also informed across the bar that the appellant has filed individual applications claiming the status of Mahajan and seeking enrollment which is pending before the Tribunal in appeal while the said application will be decided on its own merits, it cannot be overlooked that these findings against the father of the petitioners which is subject matter of challenge in the appeal preferred by them will adversely affect their plea and therefore in the facts and circumstances, the right to prosecute the appeal survives.

7. Therefore the impugned order is quashed and set aside and the application for substitution of legal heirs of the original appellant is allowed.

8. Mr. Usgaonkar, learned Counsel appearing for the respondents submitted that in view of the fact that this Court has allowed the application of the petitioners for substitution of legal heirs in place of their father i.e. the original appellant, and their appeal for enrollment as Mahajan be heard together. It will be open for the respondents to move such an application before the Administrative Tribunal which is seized of the matter.

9. Rule is made absolute in aforesaid terms with no orders as to costs.

J.N. PATEL, J.

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